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The Honorable Frank L. Kurtz
Chapter 11

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

In Re: JOHN MICHIAL SHUMATE and
JENNIFER D. SHUMATE,

Debtors,

NO. 09-05078-FLK11
Chapter 11

Harley-Davidson Credit Corp.,

Plaintiff,

NO.

COMPLAINT TO DETERMINE
DISCHARGABILITY OF DEBT

v.

JOHN MICHIAL SHUMATE and
JENNIFER D. SHUMATE, husband and
wife,

Defendants.

Harley-Davidson Credit Corp. ("HDCC"), by and through its attorneys,
Lukins & Annis, P.S., for cause of action against Debtors Shumate, alleges the
following:

COMPLAINT TO DETERMINE
DISCHARGABILITY OF DEBT: 1

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I. JURISDICTION/VENUE

1.1 This Court has jurisdiction in this matter and venue is properly situated in Spokane County, Washington, under RCW 4.12.025. Defendants have offices or transact business in Spokane County, Washington and Plaintiff's cause of action arose out of Defendants' failure to repay debt pursuant to a commercial agreement between the parties for Defendants' business transactions.

1.2 Based on information and belief, Defendants have transacted business in Spokane County, Washington by supplying parts and accessories purchased with financing provided by Plaintiff.

1.3 At all times material hereto, Defendants were doing business in the state of Washington as motorcycle retail locations.

II. PARTIES

2.1 Plaintiff HDCC is a Nevada corporation.

2.2 Defendants are husband and wife, residing in Kennewick, Washington.

III. INDEBTEDNESS TO PLAINTIFF

3.1 On or about July 13, 1999, Shumate Harley-Davidson, LLC, now known as Shumate Tri-City, LLC, entered into a Harley-Davidson Credit Corp. Customer Financing Agreement, wherein HDCC agreed to finance the purchase of goods and/or services from Harley-Davidson Motor Company and Buell Distribution Corp.

COMPLAINT TO DETERMINE
DISCHARGABILITY OF DEBT: 2

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1 3.2 On or about February 1, 2004, Shumate Spokane, LLC entered into a
2 Harley-Davidson Credit Corp. Customer Financing Agreement wherein HDCC
3 agreed to finance the purchase of goods and/or services from Harley-Davidson
4 Motor Company and Buell Distribution Corp.

5 3.3 John Michial Shumate and Jennifer D. Shumate entered into
6 continuing Guaranty Agreements guaranteeing the obligations of Shumate
7 Spokane, LLC and Shumate Tri-City, LLC to HDCC.

8 3.4 The Shumates are, directly or indirectly, majority owners and the
9 operators of the Debtors' Harley-Davidson dealerships.

10 3.5 The Customer Financing Agreements with Shumate Spokane, LLC
11 and Shumate Tri-City, LLC granted HDCC a purchase money security interest in
12 all inventory, equipment and other goods purchased by the debtors and financed by
13 HDCC, as well as a non-purchase money security interest in equipment, fixtures,
14 inventory, documents relating to inventory, software, general intangibles, accounts,
15 contract rights, chattel paper and instruments, and all spare and repair parts, special
16 tools, equipment and replacements for, and all returned repossessed goods, the sale
17 of which gave rise to the, foregoing.

18 3.6 HDCC properly perfected its security interest in the collateral through
19 filings with the Washington Department of Licensing.

20 3.7 The Customer Finance Agreements provide that the Debtors will pay
21 HDCC the floored amount upon sale of the collateral.

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COMPLAINT TO DETERMINE
DISCHARGABILITY OF DEBT: 3

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4.1 In December 2008, the Debtor dealerships fell into default for failing to account to HDCC for the proceeds of sales of HDCC's collateral.

4.3 The Debtor dealerships continued in default on and through September 9, 2009, when they filed for bankruptcy relief.

4.5 The Notices of Default advised the Debtor dealerships and the Defendants of sales of collateral out of trust and their failure to cure the payment defaults arising from their sales out of trust.

4.7 On August 11, 2009, HDCC filed an action in Spokane County Superior Court against the Debtor dealerships and the Guarantors.

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1 5.4 As a consequence of Defendants' willful and malicious acts, HDCC
2 has sustained damages in the amount of \$1,129,906.19, plus accrued interest, costs
3 and fees.

4 5.5 HDCC is entitled to judgment against Defendants Shumate for the
5 entire amount of the sales out of trust and a determination that the claim
6 represented by the judgment is not dischargeable.
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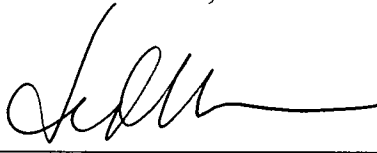
8 **CLAIM FOR RELIEF**

9 WHEREFORE, HDCC prays for relief as follows:

- 10 1. For an Order determining that the debt owed by Defendants to HDCC
11 is not dischargeable pursuant to 11 U.S.C. § 523(a)(6);
12
13 2. For judgment in favor of HDCC against Defendants Shumate in the
14 amount of \$1,129,906.19 plus interest at the contract rate;
15
16 3. For HDCC's costs and attorneys' fees; and
17
18 4. For such other and further relief as the Court may deem appropriate.

19 DATED this 28th day of December, 2009.

20 LUKINS & ANNIS, P.S.

21 By 
22

23 JED W. MORRIS
24 WSBA# 13832
25 Attorneys for Plaintiff
26 Harley-Davidson Credit Corp.

COMPLAINT TO DETERMINE
DISCHARGABILITY OF DEBT: 6

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